

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA**

<b>CHARLES MORROW, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>CIVIL ACTION NO.:</b>
	)	<b>3:07-CV-617-MHT</b>
<b>v.</b>	)	
	)	
<b>FLOWERS FOODS, INC., et al.</b>	)	
	)	
<b>Defendants.</b>	)	

**MOTION TO STRIKE DEFENDANTS' REPLY IN FURTHER SUPPORT  
OF THEIR MOTION FOR PROTECTIVE ORDER AND/OR MOTION TO  
QUASH SUBPOENA**

Plaintiffs respectfully move the Court to strike Defendants' recently filed reply briefs in further support of their motions for protective order and/or motions to quash subpoenas, based upon the following:

1. On or about April 29, 2008, Defendants filed two Motions for Protective Orders and/or Motions to Quash Subpoenas (D.E. Nos. 103, 106) directed at a subpoenas which were served by Plaintiffs on

(1) the law firm of Zarco, Einhorn & Salkowski, seeking documents related to prior litigation in which two of the Defendants to this action –Flowers Foods, Inc., and Flowers Baking Company of Opelika, LLC – were sued for improperly classifying route distributors as independent contractors for

purposes of denying “overtime wages” as required under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq; and

(2) sixteen of Defendants’ National Accounts, seeking documents specifically related to those accounts’ dealings with the Plaintiffs in this action.

2. On April 30, 2008, this Court entered two Orders to Show Cause, which allowed until May 7, 2008, for the submission of briefs on the issues raised by Defendants’ Motions. (D.E. Nos. 105, 108).

3. On May 8, 2008, and May 9, 2008, without seeking Court approval and although outside of the deadlines set by the Court for filing, Defendants submitted two reply briefs raising additional arguments not made in their initial filings. (D.E. Nos. 117, 118).

4. Plaintiffs object to the submission of Defendants’ reply briefs without the Court’s express permission. Defendants’ reply briefs are untimely, inadmissible, and prejudicial to Plaintiffs as they are not permitted to respond to the arguments and misstatements contained therein.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court strike Defendants’ reply briefs (D.E. Nos. 117, 118), and award such other and further relief as the Court deems proper.

This 12th day of May, 2008.

Respectfully Submitted,

/s/ E. Kirk Wood  
One of the Attorneys for Plaintiffs

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### CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2008, a copy of the foregoing was served on the following counsel via the CM/ECF electronic filing system:

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